IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1259 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE KSHITIJ R.VYAS
and
Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgement? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

PARMILA WD/O HEMANDAS KHAILDASMEWANI

Versus

CHANDUBHAI PUNJABHAI VORA

Appearance:

1. First Appeal No. 1259 of 1984

MR JM VASU & MR NEERAJ J VASU for appellants

NOTICE UNSERVED for Respondent No. 1

NOTICE SERVED for Respondent No. 2

MR SUNIL B PARIKH for Respondent No. 3

CORAM : MR.JUSTICE KSHITIJ R.VYAS
and
MR.JUSTICE H.K.RATHOD

Date of decision: 09/10/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE KSHITIJ R.VYAS)

The Motor Accident Claims Tribunal (2-Aux.) Ahmedabad City, by its judgment and award dated 26th/27th March 1984 in M.A.C.A. No.181 of 1981 has partly allowed the said application and ordered that all the opponents shall jointly and severally pay to the petitioners -claimants Rs.1,05,800/- together with proportionate costs and running interest at 6% per annum from the date of application till payment. It may be stated that the claimants have claimed Rs.4,35,000/-. Since the Tribunal has partly allowed the claim petition, the original claimants have filed the present appeal, claiming the rest of the amount not awarded by the Tribunal.

2. The facts as stated in the claim petition giving rise to the present appeal may briefly be summarised as under:

Deceased Hemandas Mewani was serving as a Senior Clerk in the Government Office at Viramgam and on the date of the accident, i.e. on 12th June 1981, he was returning from Viramgam to Ahmedabad and after coming out of the Broad Gauge Railway Station of Ahmedabad, he was going towards Bus on Route No.126, plying between Sarangpur and Sardarnagar, and for that purpose, he was crossing the road. At that time, opponent No.1 came from Sarangpur side and was proceeding towards Kalupur side, by driving the offending Ambassador Motor Car, bearing Registration No. GRS-9995 in excessive speed and in rash and negligent manner and knocked down the deceased, who sustained serious injuries. The deceased was taken to Sharadaben Hospital and from there, he was shifted to Vadilal Hospital. However, the deceased succumbed to the injuries in the course of treatment on 12th June 1981.

According to the claimants, the accident took place on account of the rash and negligent driving of the offending Motor Car by opponent No.1 and as the Car is owned by opponent No.2 and insured with opponent No.3, all the opponents are jointly and severally liable to pay the compensation.

On the question of quantum, it is averred that the deceased was in Government service and was earning Rs.850/- per month and in addition, he was also earning Rs.300/- per month by doing private typing work of Advocate Mr.N.V.Vanzani, at Ahmedabad. The claimants

have, therefore, claimed, in all, Rs.4,35,000/- by way of compensation.

3. The claim petition was resisted by the opponents by filing Written Statements at Exh.16, 12, and 11 respectively. They have denied the manner of the accident and the income of the deceased and also about the deceased having expired on account of the injuries sustained by him in the vehicular accident. The opponents have also denied that the accident took place on account of excessive speed and/or rash and negligent driving of the offending Motor Car by opponent No.1. According to the opponents, opponent No.1 was driving the offending Car in a slow speed and on the correct side of the road on the day in question and that the deceased was crossing the road running from the Railway Station side and while so running, he fell down on the right side of the line of parking of the Car. Opponent No.1 thereupon halted the Car, however, as many persons gathered there, said opponent No.1 rushed to Shaher-Kotda Police Station for protection, along with the Motor Car.

4. On the basis of the pleadings, the Tribunal framed the Issues at Exh.17. After appreciating the oral as well as documentary evidence on record, the Tribunal held that the deceased died due to the injuries sustained by him in the vehicular accident and that the said accident was as a result of the rash and negligent driving of the offending vehicle driven by opponent No.1. The Tribunal further held that the claimants are entitled to compensation for the loss of life of the deceased in the said accident to the extent of Rs.1,05,800/- from all the opponents who are held jointly and severally liable to pay the amount of compensation.

5. Since the opponents have not filed any appeal challenging the judgment and award passed by the Tribunal, and as stated above, the present appeal is for claiming the balance amount not awarded by the Tribunal, we are not required to decide the question regarding the negligence. The only question for our consideration is as to whether the Tribunal was justified in awarding Rs.1,05,800/- against the claim of Rs.4,35,000/-.

The Tribunal, after considering the monthly salary of the deceased, fixed the monthly income of the deceased at Rs.1,000/-. Since the deceased was aged more than 45 years at the time of the accident and had still 13 years to serve, he could have got at least one more promotion and increase in the revision of Pay Scales in the Third Pay Commission, he could have got Rs.1,000/- by

way of monthly salary and the reasoning of the Tribunal in this behalf is just and proper. However, in our opinion, the Tribunal was not justified in rejecting the other income, i.e. Rs.300/- p.m., which the deceased used to earn by doing part time typing work at the office of Advocate Mr.N.V.Vanzani. The Tribunal has rejected the said claim on the ground that the deceased, being a Government servant, was not permitted to have such earning and secondly the concerned Advocate has not produced any documentary evidence like Account Books, Notes and/or diary. The said reason of the Tribunal has not at all impressed us. True, the Government servant is not entitled to do any part time work while he is in Government service. This may be a rule. However, several Government servants, with a view to maintain large families, do carry out part time work. The deceased was not an exception. Though the act of the deceased may amount to misconduct, for which, he could have been dealt with departmentally, but while deciding the claim application, we cannot ignore the fact that the deceased used to earn Rs.300/- per month by way of part time work. The fact is that Advocate Mr.Vanzani, a practising lawyer of the Labour Court has deposed in the case that the deceased was doing typing work in his office and on an average, he was earning Rs.300/- per month there is no reason for us to reject the said evidence. It is also a fact that the deceased was not an employee of Mr.Vanzani and he used to get the amount by doing typing work and therefore there cannot be any other document like Account Books or diary for such payment. Considering this evidence, we are clearly of the opinion that the Tribunal was not justified in rejecting the claim of Rs.300/- which the deceased used to get by doing typing work. Therefore, we can hold the monthly income of the deceased to be Rs.1,300/- on an average. After deducting 1/3rd amount from the same for the personal expenses of the deceased, the monthly income of the deceased would come to Rs.900/- and the yearly dependency would be Rs.10,800/- (Rs.900 x 12). Learned Advocate appearing for the appellant has made a grievance that the Tribunal ought to have taken the multiplier of 15 in the instant case instead of 12 as has been applied by the Tribunal. Considering the fact that the deceased was more than 45 years of age, the multiplier of 13 can be applied, which would be just and proper. In this behalf, we get guidance to substantiate our views, from Schedule-II to Section 163-A of the Motor Vehicles Act wherein also, the multiplier of 13 is prescribed to a person aged more than 45 years of age. Multiplying the above amount of Rs.10,800/- by the multiplier of 13, the amount would be Rs.1,40,000/-.

The Tribunal has also awarded Rs.5,000/- by way of conventional amount for loss of expectation of life which in our opinion, is just and proper. However, the Tribunal has not awarded any amount towards consortium. In our opinion, it will be just and proper to award an amount of Rs.10,000/- towards consortium. Thus, adding the entire above heads, the appellants are entitled to Rs.1,55,400/- (Rupees One Lac Fifty-fifty thousand and four hundred only). The Tribunal has already awarded Rs.1,05,800/-. Therefore, the said amount of Rs.1,05,800/- has to be deducted from the amount of Rs.1,55,400/-. Thus, the appellants would be entitled to get the balance amount of Rs.49,600/- being the additional amount of compensation together with 6% (six percent) interest from the date of the application till realisation.

6. In the result, the appeal is partly allowed to the aforesaid extent only. The award of the Motor Accident Claims Tribunal (2-Aux.), Ahmedabad City, dated 26/27th March 1984 is modified to the extent as above. The appellants are entitled to get the balance amount of Rs.49,600/- (Rs.1,55,400 minus Rs.1,05,800/-) with interest at the rate of 6% (six percent) and the respondents - original opponents shall deposit the said amount before the Motor Accident Claims Tribunal (2-Aux.), Ahmedabad City, within eight weeks from the date of receipt of the writ of this order. On the amount being so deposited, the Tribunal shall pay the same to the appellant No.1, namely, Parmilaben, Wd/o. of Hemandas Mewani, by Account Payee Cheque after proper verification. There shall be no order as to costs.

(Kshitij R. Vyas, J.)

(H.K. Rathod, J.)

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